LOCAL FUND CESS.

1. Railway Companies like all other landholders are liable to local taxation, and they should pay the Local Fund Cess on the amount of rent payable to Government for lands held by them. (G. R. No. 2544, dated 3rd July 1868.)

2. The Local Fund Cess should be levied on the amount of rent fixed under existing rules on lands transferred to Railway Companies. (G. R. No. 2391, dated 20th April 1876.)

3. In the case of all farms that may be given in contract, the obligation to pay the one-anna cess under the Local Funds Act III of 1869 should be stipulated for. (G. R. No. 1483, dated 10th April 1869.)

4. Only such items of Sáyer revenue as are farmed are liable to the one-anna cess leviable under Section 6 of the Bombay Local Funds Act No. III of 1869. (G. R. No. 1639, dated 20th April 1869.)

5. The levy of cesses on excise under the Bombay local Acts should cease, and it must be understood that the term "Sáyer" in the Bombay Acts VIII of 1865 and III of 1869 is equivalent only to "Miscellaneous Land Revenue," and includes no assets classified in the public accounts under any other head whatever. (G. I., F. D., No. 617, dated 27th January 1873, and 3169, dated 24th September 1873; *vide* G. Rs. Nos. 681, dated 6th February 1873, 5650, dated 11th October 1873, and 1996, dated 7th April 1873.)

6. Savasthâns held on political tenure are subject to the payment of the one-anna cess. (G. R. No. 2728, dated 6th July 1869.)

7. Lease-holders of villages are liable to the one-anna cess on the amount of the revenue payable to Government under the lease. (G. R. No. 3706, dated 30th June 1873.)

8. Holders of alienated villages have not the right to levy more as Local Fund Cess from their rayats than they themselves pay to Government on account of that cess. In unsurveyed villages the revenue fixed as the total annual assessment as settled for the purposes of summary settlement, must, for the purposes of the Local Fund Act, be held to be the land revenue on which the cess can under the Act be levied, and neither the Collector nor the Jâghirdâr has the power to levy more. The Collector should not only abstain from giving assistance to collect, but should warn the rayats of Jâghirdâri villages that they are not to pay more to the Jâghirdâr than the amount of his assessment. (G. R. No. 5339, dated 8th October 1874.)

9. A Jâghirdâr who had obtained agreements from his tenants binding them to pay as Local Fund Cess sums in excess of the amounts actually payable by them in respect of their holdings, filed suits

on these agreements, and the Subordinate Judge of Bijápur decreed his claim thereon. He then petitioned the Collector for an order to enable him to obtain the assistance of Revenue officers in recovering these claims.

(2) The Collector of Bijápur considered that the agreement, on which the Jághirdár insisted, was void under Section 24 of the Contract Act (IX of 1872), and that the Subordinate Judge's decision was therefore wrong. But this view is not quite correct. No doubt, under Bombay Act III of 1869, Section 8, the right of the Jághirdár to make such recoveries *as arrears of land revenue with the assistance of Revenue officers* is strictly limited, in the case of each tenant, to the amount leviable by law as Local Fund Cess in respect of that tenant's holding.

(3) The Act gives the special power and privilege, and defines the limits to their exercise. It would, therefore, be illegal for a Revenue officer to assist the Jághirdár in recovering more than that Act authorizes by the special procedure of the Bombay Land Revenue Code (Sections 86 and 87 of Bombay V of 1879).

(4) Such contracts would not extend the powers of Revenue officers to give their assistance for recovery. The Jághirdár, therefore, could not enforce such contracts without recourse to the Civil Courts.

(5) But there is nothing in Section 8 of Bombay Act III of 1869 which makes it unlawful for any one to pay more or to contract to pay more than the law would oblige him to pay, or more than could be recovered by the special summary procedure there prescribed.

(6) Such a contract could not, therefore, be regarded by a Court as void under Section 24 of the Contract Act, on the ground that its object was unlawful.

(7) If there were any room for doubt as to the lawfulness of the object, the only way that the question could be raised would be by an appeal made by the tenants themselves. But there is clearly nothing unlawful in an undertaking to pay money. Possibly a tenant might raise the question whether there was any consideration for such an agreement. The Court would then probably consider that the mere mention of the Local Fund Cess as the nominal reason for the addition to the rent, would not materially distinguish the case from that of an ordinary agreement to pay so much rent in a lump sum without distinguishing or specifying the items. The contract might be successfully impugned of course, if undue influence, misrepresentation or coercion were shown. Such objection would have to be taken by the tenants in Court. But if the tenants have entered into the contract with their eyes open, there is nothing to prevent the plaintiff from enforcing the contract in a Civil Court, although the contract would, by no means, entitle him to recover from his tenants, as Local Fund Cess, with the assistance of Revenue officers, more than he could recover under the Act (Bombay III of 1869, Section 8) without such contract.

(8) To sum up—

(*a.*) The contract is not void, as for an unlawful object, but would apparently be enforceable in a Civil Court, unless shown to be void for want of consideration, misrepresentation or undue influence.

(*b.*) The contract does not give the Jághirdár any right to recover with the assistance of Revenue officers any more than he could before.

(L. R. No. 503, dated 16th May 1889; *vide* G. R. No. 4013, dated 3rd June 1889.)

10. In cases of inám villages which have been surveyed without the consent of the Inámdárs, the Local Fund Cess should be levied on the amount settled for calculating the quit-rent under the Summary Settlement Act and not on the amount fixed by the Survey. (G. R. No. 4189, dated 24th July 1875.)

11. An *Udhar* jamábandi village is not an inám village. The rule should be that Local Fund Cess is to be levied on the jama of an *Udhar* jamábandi village. (G. R. No. 4745, dated 20th August 1875.)

12. Whatever may be the judi on inám lands in khálsa villages or the mode of calculating it, Local Fund Cess has to be levied upon the assessment, whatever that may be. (G. R. No. 6547, dated 23rd November 1875.)

13. In alienated villages in all cases where there is no legal objection to the levy of the Local Fund Cess on the kamál, this should invariably be done, except in instances where there is a very wide difference between the jama and the kamál. Such cases may be treated exceptionally and the difference treated as a remission. (G. R. No. 888, dated 11th February 1881.)

14. The wording of Section 6 of Act III of 1869 is only intended to provide for no fresh imposition of the cess during the currency of a term of years for which the settlement may be made after the passing of the Act. (G. R. No. 3364, dated 14th August 1869.)

15. The one-anna cess is leviable on the following items which are credited to land revenue:—

1. Sale-proceeds of grass in waste land.
2. Sale-proceeds of grass in kuráns.
3. Ground rent on lands sold as building sites.
4. Proceeds from sales of melon beds by river sides.
5. Proceeds from sales of alluvial deposits on the banks of rivers let for purposes of cultivation from year to year.
6. Assessment on Gairán land when used for purposes of cultivation.

7. Proceeds from sale of mango fruit in Bagsheri land.

8. Sale-proceeds of fruit trees on waste land.

(G. R. No. 3589, dated 25th August 1869.)

16. In the case of lands held by village officers whose services are retained for the use of the State, the one-anna cess should not be levied. In all other cases the one-anna cess is to be levied not on the judi which may be payable, but on the full survey or kamál assessment. (G. R. No. 4258, dated 4th October 1869.*)

17. Excess lands held by Patels on payment of half assessment, which are not assigned to them as their private property, but which form a part of their service watans and cannot be alienated, are exempt from the payment of the one-anna cess. (G. R. No. 4940, dated 30th August 1876.)

18. It would be illegal to apply to the Local Fund Cess the rule adopted in the realization of ordinary land revenue for getting rid of fractional divisions of an anna by striking out the amount altogether if it is under six pies, and by entering one anna instead, if the amount is in excess of six pies, and as it is undesirable to forego any income, pies should be retained in the Local Fund accounts. (G. R. No. 4988, dated 16th November 1869.)

19. So long as the taking of water from any source of irrigation and payment for the same are optional with the cultivator, the payment cannot be looked upon in the light of "ordinary revenue" and should be exempted from payment of the one-anna cess. Where payment for water as a part of the land revenue, whether it be brought to account under the separate heads of water and dry-crop assessment or not, is compulsory, it should be held liable to the cess. (G. R. No. 1506, dated 23rd March 1870.)

20. In the case of salt-pan lands the levy of the Local Fund Cess is to be restricted to revenue derived from the ground according to the bigoti or acre system. (G. Rs. Nos. 2637, dated 4th June 1870, and 2865, dated 16th idem.)

21. Tenants of an inámdár holding lands on fixed *kauli* rents are liable to pay the Local Fund Cess on the survey assessment that may be newly fixed on the lands and not on the *kauli* rents actually paid by them to the inámdár. (L. R. 458, dated 25th May 1898; *vide* G. R. No. 3865, dated 10th June 1898.)

22. The one-anna cess is to be levied on the gross revenue for collection, and no deductions are

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* On revision of assessment, all service inám lands of every head, whether those of village officers or servants and whether held by officiators or others, are liable to pay the one-anna cess on their survey valuation. (G. R. No. 7651, dated 28th December 1877.)

to be allowed on account of remissions.* (G. R. No. 3079, dated 26th June 1871.)

23. All grass and grazing of the Forest Department which may be farmed is according to law subject to the Local Fund Cess. It is only in the case of the Imperial Reserved Forest Tracts that the levy of the one-anna cess from the lessee of the grazing rights is inadmissible under the orders † of the Government of India. In all other cases, whether the land is under the management of the Revenue or Forest Departments, the cess is leviable from the lessee. (G. Rs. Nos. 3040, dated 26th June 1872, 476, dated 28th June 1873, and 3535, dated 20th June 1873.)

† G. I., A. R. & C., Nos. 535, dated 28th April 1873, and 655, dated 10th June 1873.

24. Bábul kurans in charge of the Forest Department cannot be held to be "Imperial Reserve Forest Tracts" and the one anna cess is consequently leviable. (G. R. No. 539, dated 31st January 1874.)

25. Purchasers of forfeited occupancies sold at once should not be required to pay one anna in each rupee of the price realized to Local Funds, nor should one anna in the rupee of the whole sale-proceeds be credited to local cess. But as the one-anna cess is chargeable on arrears of assessment and recoverable as land revenue, the sale-proceeds of such lands should be credited in accordance with Section 183 of the Land Revenue Code—

(*a*) to expenses of sale,

(*b*) to arrears of—

(1) land revenue,

(2) one-anna cess,

the surplus, if any, being paid to the defaulter.

(G. R. No. 2002, dated 10th March 1883.)

26. Local Funds have no legal claim to compensation for losses due to the development of the Forest Department. In the first place it is to be observed that under the Bombay Local Funds Act of 1869 it is lawful for Government, but not obligatory on Government, to levy a cess for local purposes. Secondly, the cess is leviable on the survey assessment paid by occupants or enjoyed by grantees and on the sums payable by farmers of land or sáyer, that is, a cess is a tax on the subject, and is not leviable on land which is in the hands of Government and not of an occupant or grantee, or let to a farmer. Any sums given by Government to a District Local Fund are voluntary contributions and not payments rendered obligatory by law. If it happened that any lands included within forest

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* In cases in which (1) the temporary postponement of a portion of the demand which constitutes a progressive assessment is dealt with as a remission and (2) when the demand is reduced with prospective effect in consequence of alluvial action, a corresponding portion of the demand for the current year is formally remitted, the revenue is not due, and the cess is not therefore leviable. (G. of I., R. A., No. $\frac{26}{28\text{-}12}$, dated 3rd December 1895; *vide* G. R. No. 28, dated 3rd January 1896.)

limits are assessed and cultivated by occupants, the cess should be levied from the occupants and paid over to the District Fund. The cess may fairly be levied from the farmer when in protected forest a farm is given of the grazing of a definite area or of any miscellaneous produce coming within the meaning of sáyer. And it is reasonable that the Forest Department should from its own funds co-operate with District Local Funds by constructing and maintaining roads and bridges and similar works within forest limits. This is actually done. But any attempt to compensate Local Funds for items of receipt withdrawn at the discretion of Government would be merely a complicated method of doing what can be done much more simply by grants from the public revenue. It must not be overlooked that Government are largely increasing their grant to primary education to the direct benefit of Local Fund revenue and the extra grants made in this way are likely in the next few years greatly to exceed the receipts which have been transferred to the Forest Department. Nor can it be admitted that the Forest Department is analogous to a private concern worked for profit. The department is established for the public benefit, its administration is costly and the expenditure is always tending to increase. It is both reasonable and convenient to treat as receipts of the Forest Department any monies which accrue from the lands which it is deemed proper to place under the management of the department for purposes of conservancy. (G. R. No. 9094, dated 18th November 1884.)

27. The cost of all lands provided whether for the temporary or permanent use of Railways falls either immediately or ultimately on Government, and in these circumstances the capitalization of the Local Fund Cess on such lands would amount to a bonus to Local Funds at the expense of public revenues and is inadmissible on the principles laid down in Government Resolution No. 9094, dated 18th November 1884. (G. R. No. 7887, dated 26th October 1893.)

28. The Local Fund Cess cannot be levied on simple sales of trees whether the sale-proceeds are credited to Forests or to Land Revenue. The cess can be charged only on the ordinary land-revenue assessment and on sums payable by farmers of land or sáyer revenue other than ábkári the levy of the cess on which the Government of India disallowed. The claims of the Local Funds under these heads have been recognized even within Forests by Government Resolution No. 9094, dated 18th November 1884, and the levy should not be extended to items of revenue which are clearly not taxable within the meaning of the Act. (G. R. No. 9993, dated 19th December 1884.)

29. The Local Fund Cess should be calculated on the amount of the revised assessment actually for collection. (G. Rs. Nos. 3694, dated 7th May, and 5050, dated 19th June, 1885.)

30. Looking to the manner in which Bombay Act III of 1869 has been amended by Bombay Act I of 1884 and especially to the fact that the references in it to the older revenue law have been changed throughout to references to the Bombay Land Revenue Code, the term "superior holder" in Section 8 of Bombay Act III of 1869 is to be interpreted not according to the definition of that term in Bombay Act I of 1865, but according to the definition in the Land Revenue Code.

Section 8, Bombay Act III of 1869, enacts that "the provisions of the law relative to the assistance to be given to superior holders for the recovery of their dues from their tenants * * * shall be applicable to all superior holders * * in respect of the recovery of this cess from their tenants"; and when it is enquired what law is here referred to it is now-a-days found in Sections 86 and 87 of the Land Revenue Code, in which the term "superior holder" is governed by the definition of it given in that Code. On this ground also the term "superior holder" in Bombay Act III of 1869 may be held to have the same meaning as in the Land Revenue Code. No special meaning is attached to it in Bombay Act III of 1869 and the enactment which is referred to with respect to it is therefore the one in which its meaning must be sought.

(L. R. No. 256, dated 17th February 1888; *vide* G. R. No. 2072, dated 4th April 1888.)

31. The words of Section 6 of Bombay Act III of 1869 are that Government may levy a cess of "one anna on every rupee that is assessable to the ordinary land revenue." These words do not apply to any sums, however the same may be calculated, which is paid to Government for the extinction in perpetuity of their right to levy land revenue. Such sums, even if they be credited in the Government accounts to land revenue, are not 'ordinary land revenue.' (L. R. No. 261, dated 24th March 1887; *vide* G. R. No. 2452, dated 23rd April 1887.)

32. In future the payment or the redemption of the Local Fund Cess should, as a rule, be made a condition of the transfer of lands on redemption of assessment except in the case of Railway Companies. (G. R. No. 2452, dated 23rd April 1887.)

33. The law in Sind † for the levy of the one-anna cess is practically the same as in the rest of the Presidency. The law for both Sind and the rest of the Presidency authorizes the levy of that cess—

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†In the case of the Jághirdárs (Beluch Chiefs) of the Upper Sind Frontier District, the levy of hakabo and the local cess has been postponed as a matter of favour and during good behaviour and for so long as may seem proper to Government in regard to the circumstances of the district and the particular estate; *vide* G. Rs. No. 1171, dated 25th February 1881, and 9406, dated 21st December 1883.

(1) from all lands with certain exceptions; and
(2) from every farmer of land or sáyer revenue.

In the former case the cess is to be 'one anna on every rupee that is assessable to the ordinary land revenue;' in the latter it is to be one anna 'on every rupee that is payable by the farmer * * * in respect of his farm.' With regard to the farmer, the language is clear enough. He is to contribute to the Local Fund a sum equal to $\frac{1}{16}$ of the amount he pays for his farm. The word 'farmer' must be read in its ordinary acceptation as meaning a person who, for remuneration, collects taxes; so that in the Local Fund Acts it means a person who undertakes, for a consideration to collect 'land revenue' or 'sáyer revenue.' The term here used is not 'ordinary land revenue' but 'land revenue' generally, so that a farmer of any item which goes to swell the land revenue is liable to pay the cess. 'Sáyer revenue' is a technical expression and according to the usual rule must be interpreted in the 'sense in which it is understood in the * * * business in which it has acquired such sense,' unless there is reason for holding that it was used by the Legislature in a popular or wider sense; Maxwell on the Interpretation of Statutes 2 and 51.

(L. R. No. 467, dated 22nd April 1887; *vide* G. R. No. 3290, dated 26th May 1887.)

34. It is safest to construe the words "farmer of land or sáyer revenue" as meaning a person who for remuneration collects such revenue. To say that the word "farmer" is to be taken as the equivalent of *maktedár* so as to include purchasers of kurans and other rights sold at auction, is to put a strain on its wording which it will hardly bear. Moreover, it appears to be useless to put this construction on the words in question, as it seems much simpler to ascribe to contract the liability which a purchaser at an auction incurs for the payment of Local Fund. Even if this liability is not published in the notice of sale, the custom is now so thoroughly well established that all sales (other than those under the Abkári Act) of which the proceeds are credited to land or sáyer revenue are, it is believed, subject to it; and therefore any purchaser who bids or offers Rs. 16 is bound by implied contract to pay an extra rupee for Local Funds, and although the Local Fund Board may not be entitled to claim the amount as a legal right Government has the power to place it to its credit (*vide* clause (*g*) of Section 44 of Bombay Act I of 1884) and does so by its recognition of the custom.

(2) It seems then that the interpretation given in the Legal Remembrancer's report No. 467, dated 22nd April 1887, of the words "farmer of land or sáyer revenue" leads to no real difficulty or loss of Local Fund revenue. From farmers of revenue properly so called the cess is leviable under the Act. From purchasers of grass, &c., it appears due by contract. No advantage is to be gained by endeavouring to extend the former class so as to include the latter.

And it appears undesirable to strain the meaning of words in an Act in a manner not likely to command general acceptance, nor to lead to any very practical result.

(3) The connection between the word "assessable" and "assessment" as commonly understood in connection with the land revenue and the use of the words "ordinary land revenue" in Section 6 of the Bombay Local Funds Act, 1869, suggests the conclusion that it was meant to restrict the levy of Local Funds to one anna on every rupee assessable as ordinary land revenue on the land. But it is also arguable that by the words "every rupee assessable to the ordinary land revenue" it was intended to mean "every rupee liable to be placed to the account of the ordinary land revenue" and that in order to ascertain to what items this referred it would be necessary to consider what was known as "ordinary land revenue" in the account system in force in 1869. Other items besides assessment on land are credited to land revenue, and having regard to the practice that has always prevailed of levying Local Fund on such items it cannot be held that the word "ordinary" before the words "land revenue" has the effect of limiting the phrase to assessment on land. If assessment on land, tree-tax, and a number of other items are commonly designated "land revenue" in the accounts, it is not very easy to see why the assessment alone should be considered "ordinary." It is no doubt the form of land revenue most widely prevalent, but in particular localities, it is believed, other items are equally "ordinary." It may be urged that this view deprives this word of all effect, but this does not necessarily follow, as there may be items of an unusual character which cannot properly be treated as ordinary land revenue.

(4) There is an old maxim for the construction of laws "*optimus interpres usus.*" And in discussing this subject, Maxwell in his work on the Interpretation of Statutes says: "The meaning publicly given by contemporary or long professional usage is presumed to be the true one even when the language is hardly doubtful." In the present controversy this rule may advantageously be applied; custom in dealing with this Act seems by now to have assigned a meaning to the words "ordinary Land Revenue" wider than that of the expression "assessment on land," and there would be no advantage in attempting to limit that meaning.

(5) It seems probable then that, without straining the meaning of the word "farmer," the levy of Local Funds on most of, if not all, the items in respect of which it is at present levied can be justified either on the wording of the Act as interpreted by custom or on the basis of contract, express or implied; and if in regard to any single item any doubt is felt in any particular instance it can be decided when it arises. It seems difficult and dangerous to lay down any general rule applicable to all items.

(L. R. No. 1251, dated 15th September 1887; *vide* G. R. No. 5033, dated 15th July 1889.)

35. Irrigation miscellaneous receipts on account of the items noted in the margin recovered by the Collector or the Executive Engineer and credited to the Public Works Department cannot be regarded as items of "Ordinary Land Revenue," and Local Fund Cess cannot, therefore, be levied on them. (G. R. No. 6959, dated 2nd October 1890.)

1. Fines for cultivating, without permission, lands which are within the limits of Irrigation Works and pertain to the Public Works Department.
2. Sale-proceeds of grass grown on lands within the limits of Irrigation Works.
3. Proceeds of grazing in do.
4. Proceeds from sales of melon beds by margins of Irrigation Tanks.
5. Proceeds from sales of alluvial deposits on margin of Irrigation Tanks let for purposes of cultivation from year to year.
6. Sale-proceeds of fruit trees on lands within the limits of Irrigation Works.
7. Rent of portions of lands taken up in connection with Irrigation Works and let for cultivation.
8. Proceeds from fisheries in connection with Irrigation Works.
9. And other miscellaneous receipts.

36. Mámlatdárs are authorized to order refunds of Local Fund Cess up to Rs. 5 whether on account of the current or previous year, and Assistant and Deputy Collectors up to Rs. 10. (G. R. No. 4581, dated 26th June 1893.)